



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

ELECTRONIC EMAIL
CONFIRMATION OF EMAIL RECEIPT REQUESTED

Hancock County Land Acquisitions, LLC
c/o: John A. Brunini, Esq.
Butler Snow LLP
1020 Highland Colony Parkway
Suite 1400
Ridgeland, Mississippi 39157
john.brunini@butlersnow.com

RE: Notice of Potential Violations and Opportunity to Confer for Alleged Clean Water Act Violations, and Supplemental Information Request 308-2021-03, Hancock County Land Acquisitions, LLC, Hancock County, Mississippi

Dear Mr. Brunini:

On November 23, 2020, the U.S. Environmental Protection Agency, Region 4 sent a request for information to Hancock County Land Acquisitions, LLC (HCLA or Respondent) regarding the construction and maintenance of an access road on property currently owned by HCLA, located southwest of Highway 607, in Hancock County, Mississippi, at or near latitude 30.426047°N, longitude 89.659028°W (see Exhibits A and B). The purpose of the request for information was to evaluate HCLA's compliance with the Clean Water Act (CWA), 33 U.S.C. § 1151 *et seq.*, particularly whether such activities were conducted in waters of the United States without permits issued by the U.S. Army Corps of Engineers (Corps) pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

Information currently available to the EPA, including HCLA's response to the EPA's request for information, suggests that HCLA may be in violation of Sections 301 and 404 of the CWA because dredged and/or fill material were discharged into waters of the United States during construction and maintenance of the access road, and such dredged and/or fill material remains in waters of the United States presently, without the required CWA Section 404 permits, 33 U.S.C. § 1344. In response to the above potential violations, the EPA may take enforcement action, which may include issuance of an administrative order, assessment of administrative penalties, and/or initiation of a civil or criminal judicial action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

By this letter, the EPA is extending to you an opportunity to advise the Agency, via a conference call, of any further information the EPA should consider with respect to the potential violations. The EPA requests that representatives of HCLA contact Ms. Suzanne K. Armor, Associate Regional Counsel, at (404) 562-9701 or via e-mail at armor.suzanne@epa.gov within 21 business days of receipt of this letter to arrange a meeting to show cause why the EPA should not take formal civil enforcement action against HCLA for these potential violations and any other potential violations, including the assessment of

appropriate civil penalties. HCLA should be prepared to provide all relevant information with supporting documentation pertaining to the potential violations at the show-cause meeting, including but not limited to any financial information which may reflect an inability to pay a penalty. HCLA has the right to be represented by legal counsel.

All information submitted during the show-cause meeting must be accompanied by the following certification signed by a duly authorized official:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Please be aware that the EPA may use information provided during the telephone conference, or in writing, in any potential enforcement proceeding related to this matter. Failure to schedule a show-cause meeting may result in a unilateral enforcement action against HCLA. Notwithstanding the scheduling of a show-cause meeting, the EPA retains the right to bring further enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319, for the potential violations identified herein or for any other violation of the CWA.

In addition, the EPA is continuing to investigate HCLA's compliance with the CWA and requests additional information to assist in the evaluation of Respondent's compliance with the requirements of Section 404 of the CWA, 33 U.S.C. § 1344. Therefore, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, please provide the supplemental information set forth in the Enclosure A Information Request within 14 days of receipt of this letter. The information should be sent via email to Ms. Rachel Earwood at earwood.rachel@epa.gov, with a copy to Ms. Suzanne K. Armor at armor.suzanne@epa.gov. Failure to provide a full and complete response to this information request or to adequately justify a failure to respond within the time frame specified above may result in an EPA enforcement action pursuant to federal law, including, but not limited to, Section 309 of the CWA, 33 U.S.C. § 1319, and 18 U.S.C. § 1001.

If your client believes any of the requested information is Confidential Business Information (CBI), it may assert a business confidentiality claim with respect to such information in the manner described by 40 C.F.R. § 2.203(b), and as more fully described in Enclosure B hereto.

The EPA appreciates your prompt attention to this matter. If you have any questions or concerns, please contact Ms. Suzanne K. Armor, Associate Regional Counsel, at (404) 562-9701 or via e-mail at armor.suzanne@epa.gov.

Sincerely,

Mary Jo Bragan, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division

Enclosures (4)

cc: Mr. Charles R. Allred, U.S. Army Corps of Engineers, Vicksburg District

ENCLOSURE A

CLEAN WATER ACT SECTION 308 INFORMATION REQUEST - SUPPLEMENTAL

Instructions

1. Please provide a separate narrative response to each and every Question and subpart of a Question set forth in this information request.
2. Precede each answer with the number of the Question to which it corresponds.
3. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Question to which it responds.
4. You must provide the information requested even though you may contend that it includes confidential business information (CBI) such as trade secrets. You may, if you desire, assert a CBI claim covering part or all of the information requested, under 40 C.F.R. § 2.203(b), by attaching to such information at the time it is submitted, a cover sheet with the words “trade secret,” “proprietary,” or “company confidential” stamped or typed on it. Information covered by such claim will be disclosed by

the Environmental Protection Agency (EPA) only to the extent, and only by means, of the procedures set forth in the regulation set forth above. **If you do not assert a confidentiality claim, when you submit your information to the EPA, the EPA may disclose the information to the public without further notice to you.** You should read the above cited regulations carefully before asserting a CBI claim, since certain categories of information are not properly the subject of such a claim.

Definitions

The following definitions shall apply to the following words as they appear in the Questions below:

1. All terms not defined herein shall have their ordinary meanings, unless such terms are defined in the Clean Water Act (CWA) or its implementing regulations, in which case the statutory or regulatory definitions shall control.
2. Words in the masculine may be construed in the feminine if appropriate, and vice versa, and words in the singular may be construed in the plural if appropriate, and vice versa, in the context of a particular question or questions.
3. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed outside its scope.
4. The term “identify” means, with respect to a natural person, to set forth the person’s name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
5. The term “identify” means, with respect to a document, to provide its customary business description; its date; its number, if any (invoice or purchase order number); the identity of the author, addressee, and/or recipient; and substance of the subject matter.
6. The term “identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
7. The term “Discharge Area” means the wetlands and streams that have been impacted either through filling, excavating or mechanical land clearing with side cast of dredged and/or fill material. More specifically, the Discharge Area is located within an approximately 228-acre tract, southwest of Highway 607, in Hancock County, Mississippi, at or near latitude 30.426047°N, longitude 89.659028°W.
8. The term “Site” means the parcel or parcels of land on which the Discharge Area is located in, including the approximately 228-acre tract southwest of Highway 607, Hancock County, Mississippi. *See Exhibits A (large-scale Site map) and B (small-scale Site map).*
9. The term “Work” means any land clearing activities, ditching, dredging, side casting, road construction, stream crossing construction, mechanical land clearing, piping of streams, timber harvesting, excavating or filling activities that have occurred in wetlands or other waters of the United States located at the Site since you owned, controlled, or conducted any Work on the Site.

10. The term “you”, “your”, and/or “Respondent” shall mean Hancock County Land Acquisitions, LLC, and/or any company, entity, or corporation that has directed work at the Site during your ownership and/or operation at the Site.

Questions

Please provide the EPA with the following information or documents pertaining to the Site identified in Exhibits A and B:

1. Please describe the extent to which the construction was intended to serve as access roads for recreational and/or for hunting purposes and/or for transporting mining equipment.
2. Please state the amount of any profit or fees derived from use of the roads by any third-parties; for instance, in support of recreational, hunting, or access/transport activities through or across the Site. Your answer should date back to the beginning of Respondent’s ownership of the Site.
3. Please explain any intentions of the access road being a temporary structure (i.e. removed after mining equipment was transported pursuant to 33 CFR § 323.4(6)). With your response, please provide any information relevant to the maintenance of the access road to demonstrate compliance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters were not impaired, that the reach of the navigable waters was not reduced, and that any adverse effects on the aquatic environment would be otherwise minimized.

At the end of your response to this information request, please include the following certification:

“I certify that I have personally reviewed the information contained in this response to the information request and the response is truthful, accurate and complete. I further certify that the response to the information request contains all documents responsive to the request. I am aware that there are significant penalties for submitting false information including the possibility of further enforcement under the CWA.”

Name
Title

ENCLOSURE B

RIGHT TO ASSERT BUSINESS CONFIDENTIALITY CLAIMS

(40 C.F.R. Part 2)

Except for effluent data, you may, if you desire, assert a business confidentiality claim as to any or all of the information that the EPA is requesting from you. The EPA regulation relating to business confidentiality claims is found at 40 C.F.R. Part 2.

If you assert such a claim for the requested information, the EPA will only disclose the information to the extent and under the procedures set out in the cited regulations. If no business confidentiality claim accompanies the information, the EPA may make the information available to the public without any further notice to you.

40 C.F.R. § 2.203(b). **Method and time of asserting business confidentiality claim.** A business which is submitting information to the EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to the EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential.” Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by the EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.